

Filed for intro on 04/20/95
House Bill _____
By _____

Senate No. SB1880
By Elsea

AN ACT to establish a civil service system for sheriff's department employees for Rhea County.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. As used in this act, the following words and terms shall have the following meaning:

(a) "Appointing Authority" means the sheriff of the county who is charged with the duty of appointing and/or dismissing the personnel employed under his direction.

(b) "Board" means the civil service board.

(c) "Classified Service" means those positions of employment contained in the civil service system.

(d) "Employee" means any person appointed to a position or office in the classification service.

(e) "Secretary" means secretary to the civil service board.

(f) "System" means the civil service system of the county.

SECTION 2. There is hereby created a civil service board composed of five (5) members.

SECTION 3. As soon as practicable after approval of the act, the chairman of the county commission shall convene the board of county commissioners for the purpose of electing members to the civil service board.

The board of county commissioners shall by a majority vote elect five (5) board members who shall take office upon the effective date of the system and who shall serve for the following terms: two (2) members for a term of one (1) year, two (2) members for a term of two (2) years, one (1) member for a term of three (3) years. Subsequent to the initial terms of board members, as provided in this section, each member thereafter appointed to the board shall serve for a term of three (3) years. Vacancies on the board caused by the expiration of the terms of its members will be filled by election in the same manner as set out in this section for the initial appointment of members. Any vacancy occurring on the board other than those due to the expiration of a term shall be filled for the unexpired term by a majority vote at the next regularly scheduled meeting of the county commission. Each board member shall serve until his successor is appointed and qualified. No person shall be eligible to serve as a member of the board:

- (a) Who is under the age of eighteen (18) years;
- (b) Who resides outside the county;
- (c) Who holds any elected or appointive office of the county;
- (d) Who is an employee of the county; and
- (e) Who is an officer of any organized political party.

Any member of the board may be removed for just cause during the member's term of office by a two-thirds (2/3) vote of the body which elected the board member but only after such board member shall have been served with a statement in writing of the reasons alleged to justify removal, and only after such member is allowed an opportunity to be represented and publicly heard in his or her defense before the body which elected the board member.

SECTION 4. The board shall meet as soon as practicable following the effective date of the system. By a majority vote of all board members, the board shall, at its first meeting elect a

chairman for a term of one (1) year who will preside at all subsequent meetings during said term. Thereafter, the board will elect a chairman by a majority vote of all board members upon the expiration of the former chairman's term. The board shall determine the order of business at its meetings and shall make out such rules and procedures as it deems necessary for the efficient and orderly conduct of its meetings.

The board shall also designate the time and place within the county for its regularly scheduled meetings and any special meetings.

At all meetings of the board subsequent to the first meeting, the presence of any three (3) members of the board shall constitute a quorum for the transaction of the business of the board.

The board shall appoint the custodian of personnel records in the office of the finance department to be the keeper of the records and to be secretary of the civil service board.

SECTION 5. The powers and duties of the civil service board shall be as follows:

- (a) To adopt and amend rules and regulations for the administration of this part;
- (b) To make investigations concerning the enforcement and effect of this part and require observance of the rules and regulations made thereunder:

- (1) The practice and procedure of the board with respect to any investigation by the board authorized by this part shall be in accordance with the rules and regulations to be established by the board. The rules shall provide for reasonable notice to all persons affected and for the opportunity to be heard, either in person or as represented by counsel, and to introduce testimony on their behalf at a public hearing;

- (2) The board, when conducting any investigations or hearings authorized by this part shall have the power to administer oaths, take depositions, issue subpoenas, and compel the attendance of witnesses and the production of books, accounts, papers, records, documents and testimony;

(c) To hear and determine appeals and complaints respecting the administration of this part;

(d) To establish and maintain a roster of all employees of the classified service showing their position, rank, compensation and place of residence;

(e) To ascertain and record the duties and responsibilities pertaining to all positions in the classified service and classify such positions in the manner hereinafter provided;

(f) Except as otherwise provided in this part, formulate and hold competitive tests to determine the qualifications of persons who seek employment in any position, and as a result of such tests, establish employment lists of eligibles for the various positions;

(g) Establish records of performance and a system of service ratings to be used to determine the order of lay-offs and re-employment and for other purposes; and

(h) Keep any other such records as may be necessary for the proper administration of this part.

SECTION 6. The board of county commissioners shall set the compensation, if any, of the members of the civil service board.

SECTION 7. The civil service of the county is hereby divided into classified and unclassified services. The classified service shall comprise all positions of employment for the sheriff's department not specifically included in the unclassified service.

Persons holding classified service positions at the time this part becomes operative, who have served for a period longer than six (6) months, shall be retained without preliminary or performance tests, but shall thereafter be subject in all other respects to the provisions of this part. Any other persons in the classified service at the time this part becomes operative shall be regarded as holding their positions under provisional appointment.

The unclassified service shall include:

(a) Officials elected by popular vote and persons appointed to fill vacancies in such elective offices.

(b) Members of duly established boards and commissions of the county.

(c) Any person retained by the county on a consulting basis and any professional person hired in his professional capacity as determined by the board.

(d) Any person who provides services to the county on a volunteer basis or who receives no compensation for said services.

(e) Any person occupying the position of department head, deputy department head, chief deputy, or a personal assistant to a department head as is designated by an appointing authority. The intent of this provision is to restrict positions in the unclassified services to those that involve sensitive policy-making duties. In granting its approval, the board shall consider this intent as well as the size of the department in question. A list of these additional positions shall be prepared and maintained by the secretary.

(f) Any person who is a part-time employee who works less than twenty (20) hours per week. Part-time employees who work more than twenty (20) hours per week but less than forty (40) hours will remain unclassified unless thirty-nine (39) weeks per year are worked in excess of twenty (20) hours per week.

SECTION 8. Any person coming under the classified service who shall hereafter be inducted into the armed forces of the United States, or who shall hereafter enter the service voluntarily in a time of war or other national emergency, shall, upon application, receive a military leave of absence for the duration of the period of service required. The employee shall retain all rights or seniority and shall be entitled to re-employment in the same capacity and position he held at the time of entering military service; however, an application for reinstatement in such position must be made by or on behalf of such employee within three (3) months after termination of active service in the armed forces.

SECTION 9. The appointing authority will keep the board informed by periodic reports of the employment needs of his office.

The board shall, as often as necessary, hold tests to establish lists of persons eligible for the various positions in the classified service.

Such tests shall be public, competitive and free to all persons who may be lawfully appointed under the rule promulgated by the board and existing prior to the announcement of the examination and shall be in compliance with all state and local rules and regulations governing discrimination on the basis of race, creed, color, sex, age, national origin, or handicap as well as any laws regarding Americans with disabilities. Such rules may set limitations as to health, previous criminal convictions, misdemeanors involving theft, and other necessary prerequisites for the performance of the duties of the position for which examination is designated.

All tests shall be practical and shall consist only of subjects which will fairly determine the capacity of the person examined to perform the duties of the position in which the appointment is to be made. Tests may include examination for physical fitness and manual skill. No question in any test shall relate to religious or political opinions or affiliations.

The eligibles shall take rank upon a list which shall be compiled for each position, in the order of their relative excellence as determined by the tests and without reference to when the tests were given. No lists of eligibles shall be valid after one (1) year; however, the civil service board may extend an eligible period for not more than one (1) additional year.

Notice of the time, place and general scope of each test and the duties, pay and experience required for all positions for which the test is to be held, shall be given by the board to each applicant at least one (1) week preceding the test. The notice must be in writing and addressed to the last known address supplied by the applicant. Notice of promotional tests shall be given as the board may prescribe.

SECTION 10. Whenever a vacancy occurs in any position in the classified section, the department shall ask the board for the names and addresses of all eligible persons. The board shall certify the names of all persons on the eligible list for that position within five (5) working days of the request. The department head shall investigate each of the five (5) highest on the list of eligibles. If none of the five (5) eligibles are acceptable to the department head, he shall investigate the next five (5) eligibles on the list, one (1) after the other until one (1) of the

eligibles investigated is acceptable. The department head shall appoint this person to the position and notify the board of his or her action. If the civil service board fails to provide a list, then the department head may make appointments to vacancies after having notified the board of his or her intention to do so.

No appointment for any position in the classified services shall be deemed complete until after the expiration of six (6) months of probationary service, during which time the department head may determine the effectiveness of the employee and if, in the standards, the department head may terminate the employment of that person.

Whenever a position of the classified services is filled by promotion, and the services of the person promoted are terminated by the department head during the probationary period, such person shall be returned to the person's former position in the classified service unless such person's conduct during the probationary period has given grounds for dismissal for cause under this part.

Any person dismissed during the probationary period shall not be eligible for a hearing before the board.

A person certified to the department head who does not report for duty at the time so designated may be rejected by the department head, who shall notify the board of the action taken and the reason for it. The person's name will then be stricken from the eligible list.

SECTION 11. For unsatisfactory performance of duties or other causes, an employee in the classified service may be subject to the following discipline by the appointing authority:

- (a) Reprimand;
- (b) Suspension without pay for a period not to exceed thirty (30) days;
- (c) Reduction in pay within allowable range for class of employee;
- (d) Demotion to a lower classification;
- (e) Dismissal for service; and
- (f) Retirement under the terms of the retirement act, as applicable.

The appointing authority will make the disciplinary order in writing stating the discipline to be taken and the reasons for such discipline.

The disciplined employee may respond in writing within seven (7) days of receipt of the order of discipline. The board will then hold a hearing thereon, and shall thereupon fully hear and determine the matter and shall either affirm, modify or revoke such order of discipline. The appellant shall be entitled to appear personally, produce evidence, and to have counsel, and to a public hearing.

SECTION 12. Employees in the classified services may be transferred from one position to another in the same class. Transfers may be instituted only by the department head and shall be permitted only with the consent of the department head.

SECTION 13. The department heads shall be given an immediate report in writing of all appointments, reinstatements, vacancies, or other matters affecting the status of any member of the classified service or the performance of the duties of members of the classified service. The report shall be in the manner and form prescribed by the board.

The department head may suspend any employee for not more than ten (10) days for cause and there shall be no right of appeal for such suspension. The department head shall not have the authority to suspend any employee for more than one (1) suspension of ten (10) days within any given six (6) month period of time without the right of appeal.

If the department head shall suspend any employee for a period longer than ten (10) days, the suspended employee shall be notified in writing of the charges placed against him or her. The employee shall thereafter have ten (10) days to request a hearing before the civil service board. Upon receiving the employee's request, the board shall set a hearing, not more than thirty (30) days from the date of the receipt of the request.

SECTION 14. No person holding a position in the classified service shall take an active part in any political campaign while on duty, nor under any circumstances shall any employee solicit money for political campaigns. An employee shall not use his or her position to reflect the employee's personal political feelings as those of the department head or to exert any pressure

on anyone to influence that person's political views. No employee while on duty, nor any officer while in uniform, shall display any political advertising or paraphernalia on the employee's person or on the employee's automobile.

However, nothing in this part shall be construed to prohibit or prevent any such employee from becoming or continuing to be a member of a political club or organization and enjoying all the rights and privileges of such membership or from attending any political meetings, while not on duty. An employee shall not be denied freedom in the casting of a vote nor seeking election to a non-partisan office. If an employee seeks election to a partisan office, that employee must take an unpaid leave during that campaign.

Any person violating the provisions of this section shall be dismissed from the service of the county.

SECTION 15. Notwithstanding the other provisions of this act, in the event that conditions in the sheriff's department of the county or the financial condition of the county necessitates a reduction in the work force, the required reduction shall be made in such class or classes as the appointing authority designates. Favorable consideration must, however, be given toward retention of those employees in the highest class of positions. If necessary to achieve their retention, employees may be temporarily demoted to a lower class of position. The determination as to which employees within a particular class are to be laid off rests with the sound discretion of the appointing authority and will be based on such considerations as service ratings, seniority, department head recommendations and other relevant factors. Any employee laid off or temporarily demoted to a lower class of position under this section shall be given priority over other applicants to reinstatement to the employee's former position or to a comparable position in the system.

SECTION 16. The civil service system established under the provisions of this act shall become operative upon certification by the chairman of the board of county commissioners to the secretary of state that a civil service board has been duly elected and that the board of county commissioners, by a majority vote of its members, has approved:

- (a) A plan for examination of applicants; and
- (b) A listing of classified and unclassified positions.

SECTION 17. Upon ratification by the county legislative body and the full implementation of this act's provisions and until such time as this act is revoked, this act will supersede all laws, acts, rules and regulations relative to the sheriff's department personnel that are in conflict with this act.

SECTION 18. The provisions of this act are severable, and if any such provisions or sections are held to be unconstitutional, the remaining provisions and sections are not so affected but continue in full force and effect.

SECTION 19. The provisions of this act once adopted may be revoked by the same method used to adopt the act. Such revocation shall be effective with the next beginning fiscal year.

SECTION 20. This act shall have no effect unless it is approved by a two-thirds (2/3) vote of the legislative body of Rhea County. Its approval or nonapproval shall be proclaimed by the presiding officer of the county and certified to the secretary of state.

SECTION 21. For the purpose of approving or rejecting the provisions of this act, it shall be effective upon becoming a law, the public welfare requiring it. For all other purposes, it shall become effective upon being approved as provided in Section 20 .

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